

JACK H. WHEATLEY

IBLA 81-363

Decided June 8, 1981

Appeal from decision of the New Mexico State Office, Bureau of Land Management, declaring mining claims NM MC 82105 through NM MC 82110 null and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Assessment Work
-- Mining Claims: Abandonment -- Mining Claims: Assessment Work

Pursuant to 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of the recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim or the claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4. The fact that the Post Office may have assured the claimant that the documents would reach the New Mexico State Office by Dec. 30, 1980, will not excuse late filing.

APPEARANCES: Jack H. Wheatley, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Jack H. Wheatley, hereinafter appellant, appeals from the decision of the New Mexico State Office, Bureau of Land Management (BLM), dated

January 23, 1981, holding appellant's mining claims 1/ NM MC 82105 through NM MC 82110 abandoned and void because appellant failed to file evidence of annual assessment work or alternatively notices of intention to hold the claims as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and corresponding regulations 43 CFR 3833.2-1 and 43 CFR 3833.4(a). Appellant located the claims between July 2 and September 25, 1955, and submitted the location notices to BLM on October 22, 1979.

The record indicates that appellant's evidence of assessment work due prior to December 31, 1980, was not received by BLM until January 2, 1981. Accordingly, BLM issued its decision declaring the claims abandoned and void.

On appeal appellant asserts that he mailed his proof of labor by special delivery mail on December 29, 1980, from Alhambra, California, and that assurance was obtained from a Postal Service employee that the documents would reach BLM by December 30, 1980. He further asserts that it was his belief that delivery of his documents to the Postal Service constituted delivery to the Department of the Interior, Bureau of Land Management, and finally that 43 CFR 4.401(a) (1981), provides a 10-day grace period within which one may file documents if it was determined that said documents were transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed.

[1] With regard to mining claims located prior to October 22, 1976, the pertinent regulation, 43 CFR 3833.2-1(a), provides in relevant part:

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

1/ The claims involved in this appeal are as follows:

Name of BLM Claim(s)	BLM Serial Number(s)	Date of Location	Date Assessment Statement Received	Jack Rabbit	NM MC 82105
July 2, 1955	Jan. 2, 1981	Little Rock	NM MC 82106	Sept. 25, 1955	Jan. 2, 1981
Jupiter	NM MC 82107	July 2, 1955	Jan. 2, 1981	Lucky Boy I	NM MC 82108
18, 1955	Jan. 2, 1981	Lucky Boy II	NM MC 82109	July 18, 1955	Jan. 2, 1981
Chest	NM MC 82110	July 16, 1955	Jan. 2, 1981		Miser's

The above quoted regulation further notes that "file" shall mean being received and date stamped by the proper BLM office. Therefore, appellant's documents had to be received and date stamped by the New Mexico State Office by December 30, 1980, in order to be filed timely. Cleghorn and Washburn Mining Co., 51 IBLA 265 (1980); Norman E. Brooks, 48 IBLA 16 (1980); Ray F. Coffee, 47 IBLA 217 (1980); John Sloan, 47 IBLA 146 (1980). The documents were not date stamped by the State Office until January 2, 1981. Failure to comply must result in a conclusive finding that the claims have been abandoned and are void. 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that the post office may have assured appellant that the documents would reach the BLM office by December 30, 1980, one day after mailing, will not excuse late filing. We have repeatedly held that one who selects a means of delivering a document must bear the responsibility for any consequential delay or failure of delivery by that means. Cleghorn and Washburn Mining Co., *supra*; Henry D. Friedman, 49 IBLA 97 (1980), and cases cited therein; H. P. Saunders, 59 I.D. 41 (1945).

"[S]ection 1744(c) [of FLPMA] leaves the Secretary no discretion, requiring that the claims be conclusively deemed abandoned when the filing provisions are not met." Western Mining Council v. Watt, 643 F.2d 618, 628 (9th Cir. 1981). "[I]n enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences." Lynn Keith, 53 IBLA 192, 196, 88 I.D. 369 (1981).

With regard to appellant's final assertion, the regulation upon which he relies, 43 CFR 4.401, is one of a group of "Special Rules Applicable to Public Land Hearings and Appeals," and therefore cannot serve to relieve mining claimants of their obligation to comply with the mandatory requirements of FLPMA, *supra*, and its implementing regulations at 43 CFR 3800.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

